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Draft Financial Regulations of the International Tribunal for the Law of the Sea

Working paper by the President of the Meeting of States Parties

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Introduction

The draft Financial Regulations of the Tribunal were originally submitted to the ninth Meeting of States Parties for consideration (see SPLOS/36). Various proposals, amendments and suggestions were made by delegations during the consideration of the document. In the light of those proposals, the tenth Meeting of States Parties requested the Secretariat and the Registry of the Tribunal to prepare a working paper taking into account the various proposals and the outcome of the discussions during the ninth and tenth Meetings (see SPLOS/WP.14).

It may be recalled that the eleventh Meeting of States Parties further requested the Secretariat to prepare a table comparing the Financial Regulations of the Tribunal (SPLOS/WP.14), the Financial Regulations and Rules of the United Nations and the Financial Regulations of the International Seabed Authority in order to facilitate the work of the Meeting of States Parties (see SPLOS/WP.17).

The present document is prepared on the basis of the discussions on SPLOS/WP.17, which took into consideration various proposals put forward by delegations. Due to lack of time, it was not possible for the document to be translated into the official languages of the United Nations and, therefore, it could not be adopted during the twelfth Meeting of States Parties. It was therefore decided that its adoption be deferred to the thirteenth Meeting of States Parties when the document would be available in all the official languages of the United Nations.

REGULATION 1. Applicability

1.1 These Regulations shall govern the financial administration of the International Tribunal for the Law of the Sea.

1.2 For the purposes of these Regulations:

(a) "Committee on Budget and Finance" means the Committee established as such by the Tribunal;

(b) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982 together with the Agreement of 28 July 1994 relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea;

(c) "Meeting of States Parties" means the Meeting of States Parties to the Convention;

(d) "International Organizations" means international organizations, as defined in article 1 of Annex IX to the Convention, which are Parties to the Convention. "States Parties" in these Regulations does not include International Organizations;

(e) "Registrar" means the Registrar of the Tribunal;

(f) "Financial Rules" means the Financial Rules of the Tribunal;

(g) "Statute" means the Statute of the Tribunal, Annex VI to the Convention;

(h) "Working Group" means the open-ended working group established in accordance with rule 53 bis of the Rules of Procedure for Meetings of States Parties.

REGULATION 2. Financial period

2. The financial period shall consist of two consecutive calendar years, beginning with the year 2005. Until then the financial period shall consist of one calendar year.

REGULATION 3. The budget

3.1 The draft budget for each financial period shall be prepared by the Registrar.

3.2 The draft budget shall cover income and expenditures for the financial period to which they relate and shall be presented in euros.

3.3 The draft budget shall be divided into parts, sections and, as appropriate, programme support. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Meeting of States Parties, including a statement on the main changes in comparison with the budget of the previous financial period, and such further annexes or statements as the Registrar may deem necessary and useful.

3.4 The Committee on Budget and Finance shall transmit to the Tribunal the draft budget proposed by the Registrar for the following financial period with its comments and recommendations. The Tribunal shall consider and approve the draft budget for the following financial period and shall transmit it to the Secretariat of the United Nations in sufficient time to ensure its availability to all States Parties and International Organizations at least 40 days prior to the opening of the Meeting of States Parties for its final approval.

3.5 States Parties and International Organizations may request the Registrar to provide clarifications on the proposed budget. Such clarifications shall be provided by the Registrar at the meeting of the Working Group.

3.6 Supplementary budget proposals may be prepared by the Registrar if exceptional circumstances make this necessary. They shall be prepared in a form consistent with the approved budget. The provisions of these Regulations shall apply mutatis mutandis to the proposed supplementary budget.

3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments:

(a) Are for activities which have been approved by the Meeting of States Parties and are expected to continue beyond the end of the current financial period; or

(b) Are authorized by specific decisions of the Tribunal acting with the prior approval of the Meeting of States Parties.

REGULATION 4. Appropriations

4.1 The appropriations adopted by the Meeting of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes for which the appropriations were adopted and up to the amounts adopted.

4.2 Appropriations shall be available for obligation during the financial period to which they relate.

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties, International Organizations and the International Seabed Authority relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.5.

4.4 At the end of the twelve-month period provided for in regulation 4.3, the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties, International Organizations and the International Seabed Authority relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.3. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' contributions received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

4.5 Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties, International Organizations and the International Seabed Authority in proportion to the contributions determined for the financial period to which the surplus relates. As of 1 January of the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party, an International Organization or the International Seabed Authority shall be surrendered if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of contributions; and thirdly, contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, International Organizations and the International Seabed Authority, the amount so apportioned shall be surrendered only to those which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

4.6 No transfer between appropriation sections may be made without authorization by the Meeting of States Parties, unless such a transfer is made necessary by exceptional circumstances and is in accordance with criteria agreed upon by the Meeting of States Parties.

4.7 The Registrar shall prudently manage the appropriations. The Registrar shall be accountable to the Meeting of States Parties for the proper management of the financial resources in accordance with these Regulations and the Financial Rules.

REGULATION 5. Provision of funds

5.1 The funds of the Tribunal shall include:

(a) Assessed contributions made by States Parties in accordance with article 19, paragraph 1, of the Statute;

(b) Agreed contributions, as determined by the Meeting of States Parties, made by International Organizations;

(c) Contributions by the International Seabed Authority in accordance with article 19, paragraph 1, of the Statute;

(d) Contributions by other entities in accordance with article 19, paragraph 2, of the Statute;

(e) Voluntary contributions made by States Parties, other States, International Organizations, the International Seabed Authority or other entities;

(f) Such other funds to which the Tribunal may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by:

(a) Assessed contributions from the States Parties in accordance with an agreed scale of assessment based upon the scale used for the regular budget of the United Nations in the preceding calendar year adjusted to take into account the differences in membership between the United Nations and the States Parties to the Convention, as well as a floor rate and a ceiling rate as determined from time to time by the Meeting of States Parties;

(b) Agreed contributions from International Organizations, as determined from time to time by the Meeting of States Parties, taking into consideration the total amount of the budget for each financial period;

(c) Contributions from the International Seabed Authority.

Pending the receipt of such contributions, the appropriations may be financed by the Working Capital Fund.

5.3 For each of the two years of a financial period, the contributions of States Parties, International Organizations and the International Seabed Authority shall be determined on the basis of half of the appropriations adopted by the Meeting of States Parties for that financial period, except that adjustments shall be made in respect of:

(a) Supplementary appropriations for which contributions have not previously been determined;

(b) Contributions under the provisions of regulations 5.9 and 5.10;

(c) Any balance of the appropriations surrendered under regulations 4.3, 4.4 and 4.5.

5.4 After the Meeting of States Parties has adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:

(a) Transmit the relevant documents to the States Parties, International Organizations and the International Seabed Authority;

(b) Inform the States Parties, International Organizations and the International Seabed Authority of their commitments in respect of annual contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

5.5 Contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.

5.6 Annual contributions and advances to the Working Capital Fund shall be determined in euros and paid in either United States dollars or euros.

5.7 Payments made by a State Party, an International Organization or the International Seabed Authority shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the contribution was determined.

5.8 The Registrar shall submit to each Meeting of States Parties a report on the collection of contributions and advances to the Working Capital Fund.

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Meeting of States Parties.

5.10 New International Organizations shall be required to make agreed contributions for the year in which they become Parties to the Convention and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Meeting of States Parties.

5.11 Contributions of entities other than a State Party, an International Organization or the International Seabed Authority to the expenses of the Tribunal shall be treated as miscellaneous income.

REGULATION 6. Funds

6.1 There shall be established a General Fund for the purpose of accounting for the administrative expenditures of the Tribunal. The contributions referred to in regulation 5.2 by States Parties, International Organizations and the International Seabed Authority, miscellaneous income and any advances made from the Working Capital Fund to finance administrative expenditures shall be credited to the General Fund.

6.2 There shall be established a Working Capital Fund to ensure financial resources for the Tribunal to meet short-term liquidity problems pending receipt of contributions under regulation 5.2 and to provide the Tribunal with the financial means to deal with cases, in particular those requiring urgent proceedings, to the extent that the expenditure cannot be met from the contingency. The amount shall be determined from time to time by the Meeting of States Parties. The Working Capital Fund shall be constituted by advances from States Parties, International Organizations and the International Seabed Authority. Advances shall be made in accordance with the agreed scale of assessment or, in the case of International Organizations and the International Seabed Authority, as determined from time to time by the Meeting of States Parties. Advances shall be carried to the credit of States Parties, International Organizations and the International Seabed Authority which have made such advances.

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.

6.4 Income derived from investments of the Working Capital Fund in accordance with regulation 9.1 shall be credited to miscellaneous income.

6.5 Reserve and special accounts may be established by the Registrar, with the approval of the Tribunal, in accordance with these Regulations and shall be reported to the Meeting of States Parties. Trust funds may also be established by the Registrar, with the approval of the Tribunal, in accordance with these Regulations and shall be brought to the Meeting of States Parties for its consideration.

6.6 The purpose and limits of each trust fund, reserve and special account shall be clearly defined by the authority approving it pursuant to regulation 6.5. Unless otherwise decided by the Meeting of States Parties, such funds and accounts shall be administered in accordance with these Regulations.

REGULATION 7. Other income

7.1 All other income except:

(a) Contributions to the budget by States Parties, International Organizations and the International Seabed Authority in accordance with regulation 5.2;

(b) Voluntary contributions pursuant to regulation 7.2;

(c) Direct refunds of expenditures made during the financial period;

(d) Revenue derived from staff assessment,

shall be classed as miscellaneous income, for credit to the General Fund.

7.2 Voluntary contributions, gifts and donations, whether or not in cash, may be accepted by the Tribunal, provided that the purposes for which the contributions are made are consistent with the nature and functions of the Tribunal. Acceptance of any such contributions, gifts and donations which directly or indirectly involve additional financial liability for the Tribunal shall require the prior consent of the Meeting of States Parties. Information on voluntary contributions, gifts and donations accepted under this regulation shall be communicated to the next Meeting of States Parties.

7.3 Moneys accepted in accordance with regulation 7.2 for purposes specified by the donors shall be treated as trust funds or special accounts in accordance with regulation 6.5.

7.4 Moneys in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

REGULATION 8. Custody of funds

8. The Registrar shall designate a reputable bank or banks in which the funds of the Tribunal shall be kept.

REGULATION 9. Investment of funds

9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.

REGULATION 10. Internal control

10.1 The Registrar shall:

(a) Establish, with the approval of the Tribunal, detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy. These rules and procedures shall be brought to the Meeting of States Parties for its consideration;

(b) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(c) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Tribunal;

(d) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Tribunal;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Meeting of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Tribunal.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

10.3 The Registrar, with the approval of the Tribunal, may make such ex gratia payments as he or she deems to be necessary in the interest of the Tribunal, provided that a statement of such payments shall be submitted to the Meeting of States Parties with the accounts.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts together with the justifications attached thereto and brought to the Meeting of States Parties for its consideration.

10.5 Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the President of the Tribunal, deems that, in the interests of the Tribunal, a departure from the rule is desirable.

REGULATION 11. The accounts

11.1 The Registrar shall submit accounts for the financial period. In addition, the Registrar shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show:

(a) The income and expenditures of all funds;

(b) The status of appropriations, including:

(i) The original budget appropriations;

(ii) The appropriations as modified by any transfers;

(iii) Credits, if any, other than the appropriations adopted by the Meeting of States Parties;

(iv) The amounts charged against those appropriations and/or other credits;

(c) The assets and liabilities of the Tribunal.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Tribunal.

11.2 The accounts of the Tribunal shall be presented in euros. Accounting records may, however, be kept in such currency or currencies as the Registrar may deem necessary.

11.3 Appropriate separate accounts shall be maintained for all trust funds and special accounts.

11.4 The accounts for the financial period shall be submitted by the Registrar to the Auditor not later than 31 March following the end of the financial period.

REGULATION 12. Audit

12.1 The Meeting of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of

four years and its appointment may be renewed. The Tribunal may make proposals regarding the appointment of the Auditor.

12.2 The audit shall be conducted in conformity with generally accepted common auditing standards and in accordance with the additional terms of reference set out in the annex to these Regulations.

12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Tribunal.

12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit.

12.5 The Meeting of States Parties and/or the Tribunal may request the Auditor to perform certain specific examinations and issue separate reports on the results.

12.6 The Registrar shall provide the Auditor with the facilities required in the performa ce of the audit.

12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference.

12.8 The Tribunal shall examine the financial statements and the audit reports and shall forward them to the Meeting of States Parties, with such comments as it deems appropriate.

REGULATION 13. Decisions involving expenditures

13. Where, in the opinion of the Registrar, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the Meeting of States Parties has made the necessary appropriations or unless the Registrar certifies that provision can be made under the conditions of an applicable decision of the Meeting of States Parties relating to unforeseen and extraordinary expenses.

REGULATION 14. General provisions

14.1 These Regulations shall become effective on [... ... ...] and shall apply to the financial period [... ... ...] and to subsequent financial periods.

14.2 These Regulations may be amended by the Meeting of States Parties taking into account the views of the Tribunal.

Annex to the Financial Regulations

Additional terms of reference governing the audit of the International Tribunal for the Law of the Sea

1. The Auditor shall perform such audit of the accounts of the Tribunal, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Tribunal;

(b) That the financial transactions reflected in the statements have been in accordance with these Regulations and the Financial Rules, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Tribunal's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Tribunal and the Meeting of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

> "We have examined the follcwing appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Tribunal for the Law of the Sea for the financial period ended 31 December .... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with these Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Tribunal for the financial period shall be submitted to the Meeting of States Parties through the Tribunal. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Meeting of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Tribunal's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Tribunal to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Meeting of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the reports;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Meeting of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Meeting of States Parties, the Tribunal or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.